IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of Case.

S.T.R. No. 11 of 2002
{Old No.535 of 1992}

Date of decision :- 03-7-2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date :- 03-7-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No.11 of 2002
{Old No.535 of 1992}

The Commissioner,
Sales Tax
U.P. Lucknow ...Applicant/Revisionist

Versus
S/s Parvatiya Sahkari Vikash Kraya
Vikraya Sangh Ltd.
Pithoragarh ... Respondent

Mr. Kailash Chandra Tiwari learned for the revisionist.
Mr. S.K. Posti learned counsel for the respondent.

Hon'ble J.C.S.Rawat, J.

1. Heard learned counsel for the parties.

2. This revision, preferred under section 11 of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 24.12.1991, passed by the Sales Tax Tribunal, Bench-1m, Bareilly in Second Appeal Nos.138/1991, 139/2001 & 140/1991.

3. The brief facts for disposal of this revision are that the assessee is the commission agent of K.M.V.N. to collect the herbs from the forest and the assessment for the same was made for the year 1985-86 under the U.P. Sales Tax Act. The Department has admitted the account books on the basis of which the turnover of Rs.12,98,645.30 paise was accepted and the tax was demanded thereupon from the assessee. Feeling aggrieved by this, the respondent preferred the first appeal under section 9 of the U.P. Sales Tax Act. Learned first appellate court affirmed the order passed by the assessing authority by rejecting the appeal. Thereafter, the respondent preferred the second appeal

before the Sales Tax Tribunal under section 10 of the U.P. Sales Tax Act. The Tribunal had partly allowed the appeal holding that the collection of herbs on behalf of the K.M.V.N. was made as collecting agent on a fixed commission basis and it could not be treated as 'sale'. Therefore, it was held that the commission agent was not liable to pay any tax. Feeling aggrieved by the said order, the Department had preferred this revision before this Court.

4. It was contended on behalf of the revisionist that the Tribunal was not legally justified to ignore the fact that the assessee-Parvatiya Sahjkari Vikash Karya had a right to collect the herbs independently and he has been carrying the business of collecting herbs. It was further contended that the herbs were collected by the respondent for his own account. It was further contended that the Tribunal was not legally justified to hold that the herbs transferred to K.M.V.N. by the assessee as commission agent was not a sale. Learned counsel for the assessee refuted the contention and contended that the K.M.V.N. was authorized to collect the herbs through the cooperative societies vide notification dated 27.12.1980 which had been referred in the judgment of the Tribunal. It was further contended on behalf of the respondent that the Government has given the exclusive right to the K.M.V.N. to collect the herbs from the forest. It was contended that the herbs could not be collected by and other person except the K.M.V.N. through co-operative societies. Perusal of the record reveals that the account books submitted by the assessee had been accepted by the department. Contention of the assessee that the was getting commission from the KMVN for transferring the herbs is admitted to

department. Now, a short question of law rose in the revision is as follows:-

> *"Whether on the facts and circumstances of the case, the Sales Tax Tribunal was legally justified to hold that the transfer of herbs collected by the respondent on commission basis comes within the purview of 'sale' or it falls in the category of commission agent in respect of the extractions from government owned forests."*

5. Perusal of the record reveals that the exclusive right had been given to the KMVN to collect the herbs from the forest. It is also admitted that the respondent was getting commission on the said herbs for being transferred to the KMVN. In case, he would have supplied these herbs to other, the case would have been otherwise. The KMVN had authorized the assessee to collect the herbs on his behalf. Pursuant to the said order of KMVN he supplied the herbs on commission to KMVN. As such, it did not come within the purview of the 'sale'. As contained under section 2(h) of the Act. The assessee would not be a dealer as provided under section 2© of the U.P. Trade Tax Act. The assessee took only 2% commission from K.M.V.N. for transfer of such herbs and as such it cannot be held that the respondent was a dealer.

6. In view of aforesaid discussion, there is no error of law committed by learned Sales Tax Tribunal. As such, the revision is liable to be dismissed. Therefore, the revision is dismissed accordingly.

(J.C.S. Rawat, J.)

Dated 03.07.2006
LSR